

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EURAL DEWAYNE DEBBS, SR.,

Plaintiff,

v.

MARY JANE FERGUSON, *et al.*,

Defendants.

Case No. C12-1189-RSL-MAT

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

This is a civil rights action filed under 42 U.S.C. § 1983. Plaintiff is proceeding *pro se* and *in forma pauperis*. This matter is now before the Court on plaintiff's amended complaint. Service has not been ordered. A review of plaintiff's amended complaint reveals that plaintiff has not adequately alleged any viable claim for relief in his pleading. This Court therefore recommends that plaintiff's amended complaint, and this action, be dismissed.

BACKGROUND

Plaintiff filed the instant action in July 2012. Plaintiff alleged in his original complaint that the named defendants conspired with each other to conceal dates and times of scheduled

01 child custody hearings regarding plaintiff's son, and that their unlawful actions caused plaintiff
02 to lose his parental rights. Plaintiff asserted that defendants, through their alleged unlawful
03 actions, violated his rights to due process and equal protection, and breached the legal duties
04 owed to him. Plaintiff identified four defendants in his original complaint: Mary Jane
05 Ferguson, a manager/supervisor at the Office of Public Defense; Jennifer Johnson, a case
06 worker with the Department of Social and Health Services ("DSHS"); Joshua Poisel, identified
07 only as an "agent of the court"; and, Tanya Thorp, an Assistant Attorney General for the State
08 of Washington. Plaintiff requested that he be awarded several million dollars in compensatory
09 and punitive damages against each defendant.

10 After reviewing plaintiff's complaint, this Court determined that the pleading was
11 deficient in various respects. Accordingly, on September 14, 2012, this Court issued an Order
12 declining to serve the complaint and granting plaintiff leave to file an amended pleading
13 correcting certain specified deficiencies. The Court explained therein that plaintiff had not
14 alleged sufficient facts to state a cause of action under § 1983 against defendants Ferguson,
15 Johnson, or Poisel. The Court further explained that defendant Thorp was immune from
16 liability in this § 1983 action because the facts alleged by plaintiff suggested that he was
17 seeking to have Ms. Thorp held liable for acts undertaken within the scope of her official duties.

18 After addressing the deficiencies with respect to plaintiff's allegations against each of
19 the individual defendants, the Court advised plaintiff of the standards he would have to meet in
20 order to establish his conspiracy and equal protection claims, and explained that he had thus far
21 failed to allege sufficient facts to meet those standards. Plaintiff was granted thirty days within
22 which to file an amended complaint curing the specified deficiencies. Plaintiff filed a timely

01 amended complaint on October 9, 2012.

02 Plaintiff alleges in his amended complaint that five named defendants conspired to
03 deprive him of his rights to due process and equal protection by intentionally delaying,
04 concealing, and hindering vital court dates which resulted in plaintiff losing his parental rights.
05 In addition to the four defendants identified in plaintiff's original complaint, plaintiff identifies
06 Donald Minor as a defendant in his amended complaint as well. Plaintiff's amended
07 complaint is now before this Court for review.

08 DISCUSSION

09 Plaintiff was advised in this Court's Order declining to serve his original complaint that,
10 in order to sustain a civil rights action under § 1983, he must show (1) that he suffered a
11 violation of rights protected by the Constitution or created by federal statute, and (2) that the
12 violation was proximately caused by a person acting under color of state or federal law. *See*
13 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Plaintiff was further advised that in
14 order to satisfy the second prong, he must allege facts showing how individually named
15 defendants caused, or personally participated in causing, the harm alleged in the complaint.
16 *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). The Court also made clear in its
17 Order that "[v]ague and conclusory allegations of official participation in civil rights violations
18 are not sufficient to withstand a motion to dismiss." *Pena v. Gardner*, 976 F.2d 469, 471 (9th
19 Cir. 1992) (quoting *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir.
20 1982)).

21 A review of plaintiff's amended complaint reveals many of the same deficiencies
22 identified in plaintiff's original complaint. And, in fact, the allegations set forth by plaintiff in

01 his amended complaint are even more vague and conclusory than those set forth in his original
02 complaint.

03 Plaintiff alleges in his amended complaint that defendant Mary Jane Ferguson failed to
04 perform her job duties properly. However, he once again fails to explain what Ms. Ferguson's
05 "job duties" were in relation to the dependency proceedings or how, specifically, her alleged
06 failure to properly perform those duties caused plaintiff any harm of constitutional dimension.
07 Plaintiff's allegations against Ms. Ferguson are vague and conclusory and insufficient to state a
08 cause of action under § 1983.

09 Plaintiff alleges that defendant Donald Minor failed to perform his legal duties by
10 failing to contact vital, but unidentified, witnesses. Plaintiff's allegations suggest that Mr.
11 Minor was an attorney who was involved in the dependency proceedings in some fashion.
12 However, plaintiff fails to explain Mr. Minor's precise role in the process. Plaintiff also fails
13 to explain, specifically, how the failure to call witnesses whom he does not even identify
14 affected the dependency proceedings. Plaintiff's allegations against Mr. Minor are vague and
15 conclusory and insufficient to state a cause of action under § 1983.

16 Plaintiff alleges that defendant Jennifer Johnson made false representations to the Court
17 by stating she didn't know of plaintiff's whereabouts when, in fact, she did know. Plaintiff
18 asserts that Ms. Johnson's misrepresentations caused him to miss court dates which, in turn,
19 caused him to lose his parental rights. However, plaintiff fails to explain, specifically, what
20 the alleged misrepresentations were, when they were made, or how they ultimately affected the
21 outcome of the proceedings. Plaintiff's allegations against Ms. Johnson are vague and
22 conclusory and insufficient to state a cause of action under § 1983.

01 Plaintiff alleges that defendant Joshua Poisel intentionally withheld court dates and
02 made false representations. However, plaintiff once again fails to explain Mr. Poisel's role in
03 the dependency proceedings or how Mr. Poisel's alleged misconduct caused plaintiff harm of
04 federal constitutional dimension. Plaintiff's allegations against Mr. Poisel are vague and
05 conclusory and are therefore insufficient to state a claim for relief under § 1983.

06 Plaintiff alleges that defendant Tanya Thorp presented fraudulent documents,
07 misrepresented facts, and improperly received and reviewed plaintiff's medical records.
08 Plaintiff specifically alleges, in apparent response to this Court's previous conclusion that Ms.
09 Thorp is entitled to immunity in this action, that Ms. Thorp acted outside her legal duties when
10 she investigated and illegally obtained plaintiff's medical records. Even assuming this
11 allegation were sufficient to pierce the veil of immunity with respect to his medical records,
12 plaintiff fails to explain how those records were relevant to the dependency proceedings. With
13 respect to plaintiff's claims that Ms. Thorp presented fraudulent documents and misrepresented
14 facts, plaintiff fails to specifically identify the documents or facts at issue and those claims, on
15 their face, appear to fall within the scope of immunity afforded prosecutors in actions brought
16 under § 1983. Plaintiff therefore fails to adequately allege any cause of action against Ms.
17 Thorp.

18 CONCLUSION

19 When a complaint is frivolous, malicious, fails to state a claim on which relief may be
20 granted, or seeks monetary relief against a defendant who is immune from such relief, the Court
21 may dismiss an *in forma pauperis* complaint before service of process under 28 U.S.C.
22 § 1915(e)(2)(B). As plaintiff has not adequately alleged any viable claim for relief in his

01 amended civil rights complaint, this Court recommends that plaintiff's amended complaint, and
02 this action, be dismissed, without prejudice, pursuant to § 1915(e)(2)(B). A proposed Order
03 accompanies this Report and Recommendation.

04 DATED this 2nd day of January, 2013.

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07 Mary Alice Theiler
08 United States Magistrate Judge
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